



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

2004 DEC 17 AM 10: 24

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2003-0073

IN THE MATTER OF:

**JDN INTERMOUNTAIN
DEVELOPMENT PIONEER HILLS LLC**

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 17, 2004
DATE

APC

Alfred C. Smith
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

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IN THE MATTER OF:) Docket No. CWA-08-2003-0073
)
)
) CONSENT AGREEMENT
JDN INTERMOUNTAIN)
DEVELOPMENT PIONEER HILLS, LLC)
)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Respondent, JDN Intermountain Development Pioneer Hills, LLC, ("Respondent"), (together, the "Parties"), by their undersigned representatives, hereby consent and agree as follows:

1. On May 2, 2003, EPA issued a Notice of Inspection to Respondent, which set forth certain deficiencies observed during an inspection conducted May 31, 2002 under the Clean Water Act ("Act"), at the Pioneer Hills Development construction site ("Pioneer Hills"). On July 11, 2003, EPA filed an administrative Complaint alleging certain violations of the Clean Water Act ("Act"), § 301 (a), 33 U.S.C. § 1311(a), specified in the Colorado Discharge Permit System ("CDPES") permit no. COR-030000. The Complaint proposed an administrative penalty for the alleged violations of the storm water requirements. On October 30, 2003 and June 17, 2004, respectively, EPA filed amended complaints, correcting Respondent's name and alleging additional violations of the Act. The Parties want to resolve all matters addressed by the Inspection Report and the Second Amended Penalty Complaint, (collectively, the "Claims"). In consideration of the EPA's agreement to relinquish all such Claims against Respondent, and in further consideration of the other agreements specified herein, the Parties agree as follows:

2. Respondent admits the jurisdictional allegations of the Second Amended Penalty Complaint and neither admits nor denies the specific factual allegations of the Second Amended Penalty Complaint. By entering into this Consent Agreement, Respondent does not admit to any wrongdoing or liability as a result of any circumstance or condition or any act or failure to act, whether singularly or collectively, and the consideration for the settlement delivered and paid by Respondent to EPA shall not be deemed an admission of any wrongdoing or liability by the Respondent.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Second Amended Penalty Complaint or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees that not more than thirty (30) calendar days from the date of a signed final order in this matter, Respondent shall pay a civil penalty in the amount of \$100,000 (One Hundred Thousand Dollars) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the final order, issued by the Regional Judicial Officer, that adopts this Consent Agreement.

The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.

- b.. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check shall be sent to:

Lee Hanley, Environmental Engineer
Technical Enforcement Program (8ENF-W-NT)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII

999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).
 - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
 - e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
 - f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondent.
6. The penalty specified in paragraph 5, above, shall represent administrative penalties

assessed by EPA and shall not be deductible for purposes of Federal taxes.

7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent Agreement.

10. Pursuant to 33 U.S.C. § 1319(g)(4), public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

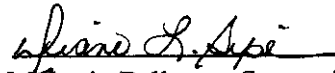
13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full settlement of the

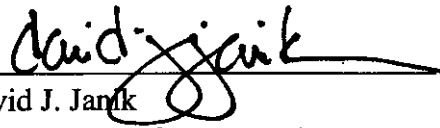
Claims or to any fact known to EPA arising out of the Second Amended Complaint or Inspection Report.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

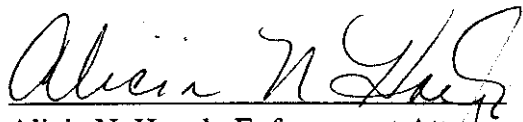
Date: 16 December 2004

By: 
for Melanie Pallman, Supervisor
Technical Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice

Date: 16 December 2004

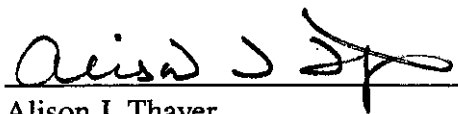
By: 
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

Date: Dec. 16, 2004

By: 
Alicia N. Hoegh, Enforcement Attorney
Elyana Sutin, Enforcement Attorney

TEMKIN WIELGA & HARDT, LLP

Dated: December 15, 2004

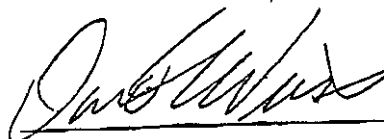
By: 
Alison J. Thayer
Elizabeth H. Temkin
1900 Wazee Street, Suite 303
Denver, CO 80202

ATTORNEYS FOR RESPONDENT
JDN INTERMOUNTAIN DEVELOPMENT
PIONEER HILLS, INC.

JDN INTERMOUNTAIN DEVELOPMENT
PIONEER HILLS, INC. **

Dated: 12/17/04

By:



David E. Weiss
Vice President

** a Georgia limited liability company
By JDN Intermountain Holdings, Inc.
Its Sole Member

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **JDN INTERMOUNTAIN DEVELOPMENT PIONEER HILLS LLC., DOCKET NO.: CWA-08-2003-0073** was filed with the Regional Hearing Clerk on December 17, 2004.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Alicia Hoegh, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was resent and placed in the United States mail certified/return receipt requested on December 21, 2004, to:

Alison J. Thayer, Esq.
Elizabeth H. Temkin, Esq.
1900 Wazee Street, Suite 303
Denver, CO 80202

Pouch mailed to:

Honorable Barbara A. Gunning
Office of Administrative Law Judges (1900L)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

December 21, 2004


Tina Artemis
Regional Hearing Clerk



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